

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2 (1998 State Bar Edition). (This is a GIL).

April 12, 2000

Dear Xxxxx:

This letter is in response to your letter dated March 1, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

COMPANY is currently negotiating an agreement to supply coal to our power plant in CITY, IL. The vendor has offered to provide sulfur dioxide emission allowances to allow us to meet environmental requirements when burning this fuel.

The draft contract specifies an FOB mine price for the coal. A separate line item states the price of the SO₂ allowances. Both components are fixed, with the exception of certain qualitative penalties that may affect the coal price.

It is my understanding that the portion of the purchase price attributable to the value of SO₂ allowances is not subject to sales tax. Per my discussion with PERSON of your office, the allowances represent intangible property and sales tax applies only to tangible personal property.

PERSON suggested that I request a general information letter from the department to confirm my understanding. I can be reached at ##### if you need further information. I look forward to your prompt response.

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (1998 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1998 State Bar Edition).

Sales of emission allowances are generally not subject to Retailers' Occupation Tax because their sale usually involves no transfer of tangible personal property. The sale of intangibles is not subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.120, enclosed.

April 12, 2000

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.